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Comptroller General
of the United States

737271

Washington, D.C. 20548

Decision

Matter of: AEC-ABLE Engineering Company, Inc.

File: B-257798.2

Date: January 24, 1995

William R. Purdy, Esq., and Christopher Solop, Esq., Ott, Purdy & Scott, for the protester.
James F. Worrall, Esq., Venable, Baetjer, Howard & Civiletti, for Martin Marietta Astronautics, and J.C. Wells for Astro Aerospace Corporation, interested parties.
Marcia Jane Bachman, Esq., Jerri G. Brewer, Esq., and Philip M. Schneider, Esq., Department of the Air Force, for the agency.
Christina Sklarew, Esq., Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that proposals submitted by the awardee and proposed awardee under a Program Research Development Announcement (PRDA) procurement should have been disqualified from the competition for their alleged failure to adhere to restrictions in the PRDA is denied where the record shows that the agency's conclusions regarding compliance with the PRDA requirements were reasonable.

2. Protest that evaluation was flawed by agency's failure to give stated evaluation criteria the relative importance that was established in the solicitation is denied where, in response to protest, the agency reevaluated the proposals (applying the properly weighted evaluation criteria), and the reevaluation did not change the awardee's positions as the highest ranking offerors, establishing that the error had not prejudiced the protester's position.

DECISION

AEC-ABLE Engineering Company, Inc. (AEC) protests the Air Force's determination not to award a contract to the protester, but to award contracts to two other firms, Martin Marietta Astronautics (MMA) and Astro Aerospace Corporation under Program Research and Development Announcement (PRDA)

No. F29601-94-C-0055.[1] The PRDA was issued by Phillips Laboratory, Kirtland Air Force Base for basic research in conventional space power, and called for research to develop enabling technology for future Air Force space systems. AEC contends that the award decision was based on an improper evaluation of proposals.

We deny the protest.

The PRDA, published in the CBD on October 21, 1993, stated that the Conventional Space Power Branch of Phillips Laboratory was interested in research in the area of solar array technology, "directed towards new and innovative technologies encompassing all aspects of solar arrays for future use on Air Force space systems." The PRDA listed the main areas for improvement over state-of-the-art solar array technology; stated that the program would address the single wing structure of a dual wing solar array and listed what that should include; defined the main goals in terms of stowed volume and specific power per wing; and advised offerors to describe in their proposals their capability to construct a flight test prototype of the solar array being developed.[2]

Under PRDA evaluation procedures, proposals are evaluated and ranked for technical merit as Category I, Category II, or Category III. Air Force Materiel Command Federal Acquisition Regulation Supplement (AFMC FAR Supp.) § 5335.016(92)(d) (1992). Proposals in Category I are the

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[1]A PRDA is a special type of solicitation authorized by Air Force Systems Command Federal Acquisition Regulation Supplement §§ 5335.90 et seq. The PRDA is issued in the form of an announcement in the Commerce Business Daily (CBD), and is typically used to obtain proposals for exploratory research in situations where the government's goal is to solicit innovative approaches, rather than stifle or limit potential responses by describing the government's requirement more narrowly through a request for proposals.

[2]Offerors were to propose to develop a prototype lightweight, deployable solar array. The solar array is a component of a power subsystem used on small, light spacecraft; it is the holder or carrier on which photovoltaic or solar cells are mounted. Because the solar array structure is often physically the largest subsystem, one logical approach to improving small spacecraft operation is to reduce the weight and volume of the array, while increasing its specific power. The goal of the PRDA was to develop an array for space applications with such weight/volume and performance advantages.

most highly rated and are recommended for acceptance; depending on availability of funds, one or more of these offers may be awarded a contract. Category II proposals are considered weaker in technical merit and may be recommended for acceptance (depending on availability of funds) but have lower priority than Category I. Category III proposals are rejected. Id.

Nine firms submitted proposals in response to the PRDA, including the protester, MMA, and Astro. The proposals were evaluated and categorized according to their technical merit. The proposals submitted by MMA and Astro received the highest technical evaluation scores of the three proposals that were placed in Category I, while AEC's proposal was placed in Category II. The agency determined that funding constraints precluded accepting all three Category I offers for funding, and that no Category II proposals could be funded. The agency notified all of the offerors of the results of the technical evaluation of their proposals by letter of February 18. A contract was awarded to MMA on June 25, 1994, and a proposed award to Astro has been suspended pending resolution of this protest.

AEC protests that the proposals submitted by MMA and Astro were improperly evaluated because they allegedly disregarded restrictions specified in the PRDA. The protester cites the following provision from the PRDA: "In order to emphasize solar array innovation, solar cell research and development shall not be included in the proposal. Therefore, current or near-term solar cell technology must be used for the technical analysis."

AEC argues that MMA and Astro each proposed a methodology to achieve the PRDA's performance goal that requires the use of a type of solar cell that does not qualify as "current or near-term solar cell technology"; the protester contends that the selected types of solar cells are instead "currently being produced only in small quantities in specialized research laboratories." AEC contends that the particular solar cells proposed by these two offerors "are years away from commercial application and availability to solve the problem stated by the subject PRDA." AEC concludes that the inclusion of these solar cells should have disqualified the two proposals from consideration for award.

We do not find reasonable AEC's premise that the PRDA necessarily forbade the inclusion of the types of solar cells at issue here. The statement in the PRDA that "solar cell research and development shall not be included in the proposal" only prohibits, in our view, proposing to perform research and develop technology for solar cells themselves. The Air Force states in its protest report that the agency's

intention in including that phrase in the PRDA was for contractors to focus on design solutions, rather than individual component improvements; the agency did not want to spend its resources on solar cell development as part of the array program. We think this intention is clearly expressed in the language to which AEC itself has pointed: "In order to emphasize solar array innovation, solar cell research and development shall not be included in the proposal." (Emphasis added.) Neither MMA nor Astro proposed solar cell research or development to meet the goals of the PRDA.

The protester reads the PRDA's description of acceptable solar cells too restrictively. MMA proposed to use a type of solar cell that it is currently developing under two other contracts, one of which is for Phillips Laboratory. The solar cells that Astro proposed are currently in development and are expected to be available in production quantities in 1996. AEC argues that these two types of solar cells are "developmental," whereas the cell that was proposed in AEC's own proposal is "currently commercially available." AEC contends that the use of developmental cells is prohibited, while currently commercially available cells are required. However, neither of these terms appears in the PRDA. Notwithstanding AEC's insistence that any reliance on "advanced solar cell technologies still in developmental stages" was "contrary to the explicit prohibition of the PRDA," no such prohibition is explicit or implied. The specifications did not restrict the acceptable solar cell technology to types that are current commercially available, as the protester suggests; rather, the PRDA permitted solar cell technology that is "current or near-term." (Emphasis added.)

The relevant question is whether it was reasonable for the agency to conclude that the types of solar cells proposed by MMA and Astro qualify as "near-term technology." Of the nine proposals that were submitted in response to the PRDA, seven relied on solar cell technology that is currently under development. Of these seven, the Air Force determined that five (including MMA's and Astro's) were considered close enough to production capability to be considered "near-term" technology. The Air Force has included technical data in its protest report to support its expectation that the types of solar cells proposed by MMA and Astro will be available in production quantities by late 1995 and early 1996. This data was provided by a number of sources, including Air Force and National Air and Space Administration space photovoltaics experts, reports of projected commercial and military uses of the cells, and published technical papers. The projected availability of one of the cell types is based on 3 years of development history and success and the cell yields provided by limited

production runs; the record shows that preliminary qualification data has been obtained and the cells are scheduled for a flight test in the summer of 1995. The other type of cell is being developed for commercial satellite systems scheduled to launch in late 1995 and early 1996.

AEC argues that these cells are unacceptably "developmental" because the cells are not yet commercially available and cites "documented history of similar developments" that, the protester contends, shows that other types of cells took longer to develop to the point of commercial availability than the time frame projected by the agency for the cells at issue here. In its protest, AEC acknowledges that the solar cell technology that MMA and Astro propose to use is "currently being produced only in small quantities," yet disagrees with the agency's conclusion that the technology is "current or near-term." The fact that a protester disagrees with the agency's technical conclusions does not itself render the technical evaluation unreasonable. See JEM Assocs., B-245060.2, Mar. 6, 1992, 92-1 CPD ¶ 263. Based on our review of the record, which shows the relatively advanced stage of development and initial production of the challenged cells, and includes information supporting the near-term classification of those cells, we conclude that the Air Force reasonably determined that MMA and Astro had proposed to use near-term solar cell technology.

AEC also challenges the scoring of proposals, contending that although the agency was required to weigh the six evaluation factors listed in the PRDA equally (since they were listed in the PRDA without any indication of their relative importance), varying weights were assigned to the factors during evaluation of the proposals. After AEC raised this protest issue, the Air Force corrected this error by reevaluating the proposals, assigning equal weight to each of the evaluation criteria as required by the PRDA's announced evaluation scheme. The agency reports, however, that upon reevaluation of the proposals, AEC's competitive position did not improve; MMA and Astro again received the highest technical scores, and AEC was ranked slightly lower among the Category II offerors.

Prejudice is an essential element of a viable protest; consequently, we will not sustain a protest against an alleged evaluation error unless the protester was somehow prejudiced. See Square 537 Assocs. Ltd. Partnership, B-248403.2, Apr. 21, 1994, 94-1 CPD ¶ 272. Here, even after the Air Force corrected its evaluation error, the record shows that MMA and Astro would still have received the contract awards since they submitted the highest-ranked proposals. Under these circumstances, we see no basis to

conclude that AEC was prejudiced by the agency's initial evaluation error.

AEC also alleges that the technical evaluation was improper because the agency misapplied certain criteria. For example, the protester states that the evaluation criteria specifically give preference to proposals that develop hardware and generate experimental data. The protester asserts that because AEC has developed hardware in the past and performed in-house research and development, it should have been more highly scored in this area. However, the agency responds that the government's interest is in hardware that would be developed during the performance of the contract at issue here, not in hardware or experimental data that a contractor had already produced. The PRDA did not state that previously developed hardware or research would warrant a higher technical score. The record shows that AEC's developed hardware and research efforts were considered by the agency in evaluating the proposals. However, the protester's proposal was not ranked as highly as those selected for award which proposed, in great detail, innovative, technically advanced hardware development and generation of experimental data to meet the agency's requirements. The record provides no basis to challenge the reasonableness of that evaluation.

AEC also protests that its level of experience was undervalued in the evaluation, complaining that the agency "relied on speculation regarding AEC's experience and abilities." The protester quotes several comments made by evaluators in the technical evaluation regarding AEC's specific level of experience and takes issue with their accuracy. For example, the protester argues that "one evaluator stated [AEC] had 'no solar array blanket/cell experience' when the fact is that [AEC] has designed, developed, tested, and fabricated a blanket with exceptional properties."

However, at issue here is not the experience that AEC may in fact possess, but the evaluation of the experience that it demonstrated in its proposal. Where an offeror has failed to demonstrate relevant experience in its proposal, the evaluators are left to evaluate only that experience that has been included in the proposal; an offeror must affirmatively demonstrate the merits of its approach within the four corners of its proposal. AWD Technologies, Inc., B-250081.2; B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83. Although AEC argues that it has extensive experience, we find that the specific examples of that experience which it now raises to rebut the agency's evaluation are not detailed in its proposal. The agency points out that AEC's proposal relied on two arrays on which it had worked as examples of its solar array experience; yet, AEC included very little

information in its proposal about either of these systems to support the claimed success of AEC's efforts in this area. While AEC argues that it should have been given additional credit based on its proposed association with another firm experienced in this type of work, the protester's proposal did not provide specific information regarding the proposed teaming agreement to show the level of support AEC would receive from the other firm. In these circumstances--where the protester fails to include in its proposal the level of detailed information necessary to demonstrate the offeror's abilities and understanding of the requirements--the actual level of ability that the protester may possess (but does not demonstrate in its proposal) is irrelevant to the propriety of the evaluation. AWD Technologies, Inc., supra. Based on our review of the record, we have no basis to question the reasonableness of the agency's evaluation of AEC's level of experience.

AEC also protests that the agency failed to properly value the "innovation and ability to solve the stated problem" that it demonstrated in its proposal. However, the record shows that the proposal in fact scored quite well in this area; its primary weaknesses were in cost and scheduling areas, where it was considered unrealistic and incomplete. AEC challenges the evaluation of its schedule, stating that the schedule set forth in its proposal is the same schedule which it has in fact followed to actually manufacture the solar array being offered here. However, the record shows that AEC's schedule was considered unreasonable because it was not written to correspond to the tasks described in the proposal. In addition, the time allowed to complete the schedule was deemed unrealistic. Notwithstanding AEC's contention that the schedule has been followed before, AEC's proposal did not explain that its schedule was based on actual experience or prior performance, essentially leaving the evaluators to judge the realism of the protester's projected schedule in the abstract. Moreover, it is apparent from the evaluation that AEC and the evaluators had divergent views on the extent of work that would be required for full performance; the evaluation notes that "most of the

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[3]The protester contends that the agency improperly failed to discuss any concerns about the firm's proposal, such as its lack of detail, with AEC. However, under PRDA procedures, there is no requirement for discussions with offerors whose proposals have not been selected for funding. AFMC FAR Supp. § 5335.016-93(b)(1)(i). Since we have concluded AEC's proposal was properly evaluated and ranked in Category II, and thus would not displace the higher-ranked Category I proposals, it was not eligible for funding. Accordingly, the contracting officer was not required to conduct discussions with the firm.

work has already been accomplished . . . however, adequate subsystem testing of the final design and experimental fabrication are not yet complete. The proposal allocates few resources for the completion of these initial issues." The protester's disagreement with the agency's assessment of the realism of its projected schedule stems from the basic discrepancy in the views of the offeror and the evaluators--with one party viewing the development of the product as having already been completed previously and the other viewing the prior results as incomplete. However, the protester's disagreement with the agency does not render the agency's evaluation unreasonable. See JEM Assocs., Inc., supra.

The protest is denied.

Robert P. Murphy
General Counsel